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ABSTRACT

This paper describes meetings of the American Indian Study Committee of the Wisconsin Legislative Council and background related to 1987 Assembly Bill 316 on the definition of "American Indian." This definition is relevant to qualification for minority group business preferences in state purchasing and state construction projects, the minority business participation goal for state building repair contracts, and participation in several state programs. A previous statute identified as an American Indian any person meeting one of three criteria: (1) enrollment in a federally recognized tribe or band; (2) documented American Indian ancestry (at least one-fourth); or (3) documented tribal recognition of American Indian identity. At their November 14, 1986 meeting, committee members emphasized that tribes determine their own membership and that the statutes should reflect this fact. Accordingly, Assembly Bill 316 retains the first two criteria and clarifies the third one by specifying that the person must be recognized as an American Indian by the elected governing body of a federally recognized tribe or band. The report includes committee and council votes and a list of all materials received by the committee, relating to this subject. (SV)

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WISCONSIN LEGISLATIVE COUNCIL

REPORT NO. 10 TO THE 1987 LEGISLATURE

LEGISLATION ON THE DEFINITION OF "AMERICAN INDIAN"

1987 ASSEMBLY BILL 316, RELATING TO THE DEFINITION OF "AMERICAN INDIAN" FOR PURPOSES OF MINORITY CONTRACTING

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REPORT NO. 10 TO THE 1987 LEGISLATURE*

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*Prepared by: Pam Shannon, Staff Attorney, Legislative Council Staff.

PART I

KEY PROVISIONS OF 1987 ASSEMBLY BILL 316

1. Assembly Bill 316 revises the statutes related to the definition of "American Indian" for purposes of minority contracting.

2. The Bill clarifies the definition of "American Indian," which is used by the Department of Development (DOD) in the State's Minority Business Certification Program.

3. The Bill specifically provides that one of the criteria for state certification as an American Indian is recognition as an American Indian by the elected governing body of a federally-recognized American Indian tribe or band.

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The American Indian Study Committee (AISC) is a permanent statutory committee established under s. 13.83 (3), Stats. The Committee is directed by statute to:

> ...study the problems and develop specific recommendations and legislative proposals relating to American Indians and the various Indian tribes in this state.

The membership of the AISC, appointed by the Legislative Council, consists of eight legislative members from the Senate and Assembly and six Public Members appointed from names submitted by the Wisconsin Indian tribes and the Great Lakes Inter-Tribal Council. The Committee is assisted by a Technical Advisory Committee composed of a representative of each of the following state departments: Public Instruction; Health and Social Services; Industry, Labor and Human Relations; Justice; Natural Resources; Revenue; and Transportation.

B. SUMMARY OF MEETINGS

In the 1985 Legislative Session, the AISC discussed a wide variety of subjects. As a result of its deliberations, the AISC developed the following three proposals which it approved and submitted to the Legislative Council with a recommendation for introduction in the 1987 Legislature:

1. 1987 Assembly Bill 316, relating to the definition of "American Indian," which is the subject of this report.

2. 1987 Assembly Bill 315, relating to child abuse and neglect reports pertaining to Indian children, which is described in Wisconsin Legislative Council Report No. 9 to the 1987 Legislature.

3. WLCS: 673/3, relating to creating a Division of Indian Affairs in the Department of Administration (DOA), which was placed on the table by the Legislative Council at its March 25, 1987 meeting.

The discussions and actions of the AISC are summarized below.

At its April 19, 1985 meeting, the Committee heard testimony from DHSS staff regarding problems resulting from the current requirement that persons required to report child abuse must inform a tribal government when an Indian child is the subject of a child abuse report.

The Committee also discussed MEMO NO. 5, Issues Relating to Creating a State Indian Organization, dated April 12, 1985. The Committee discussed extensively the current organizations and individuals within state government that have responsibilities related to Indians. The Committee discussed how the responsibilities of these organizations or individuals might be expanded to provide additional governmental services to Indian tribes and individuals.

At its June 14, 1985 meeting, the AISC discussed MEMO NO. 9, Options for Structuring Indian-State Relations, dated June 7, 1985. The Committee also discussed a study prepared by the North Dakota Indian Affairs Commission, which contained information on Indian organizations in 25 states.

At its August 16, 1985 meeting, the Committee heard presentations by Wallace Coffey, Director of the Nebraska Indian Commission, and Roger Head, Director of the Minnesota Indian Affairs Council. The Committee discussed extensively the budgets and functions of these two state Indian organizations. The Committee also conducted a public hearing on the subject of creating a state Indian organization.

At its October 23, 1985 meeting, the Committee again considered the child abuse issue and reviewed a preliminary bill draft which deleted the current requirement that a mandatory reporter inform a tribal government of child abuse cases involving Indian children. The draft instead provided that a county agency and a tribal governing body could enter into a cooperative agreement regarding the receipt of child abuse and neglect reports, the investigation of child abuse and neglect allegations and the provision of services to Indian children.

The Committee also discussed WLCS: 673/1, the first draft of a proposal relating to creating a Division of Indian Affairs in the DOA. The Committee decided that it would be useful to circulate the draft extensively and obtain additional comments on the draft before taking final action.

At its January 17, 1986 meeting, the Committee reviewed a subsequent child abuse draft on child abuse reporting which stated the legislative intent to encourage the development of cooperative agreements between county agencies and tribal governing bodies regarding investigations of abuse or neglect of Indian children. Chairperson Metz directed Committee staff to form a working group with representatives of the DHSS, the tribes

and other interested persons, to develop another version of the draft legislation.

The Committee also discussed and took final action on WLCS: 673/3, relating to creating a Division of Indian Affairs in the DOA.

At its April 18, 1986 meeting, the Committee also discussed the issue of definitions of "American Indian" with special emphasis on minority highway contracting. The Committee agreed that further discussion of this subject was necessary.

The Committee also reviewed the bill draft on child abuse reporting prepared by the working group established at the previous Committee meeting. The working group's draft provided that a county agency which receives a child abuse or neglect report involving an Indian child would be required to notify the tribal agent designated by each tribe and band, under the Federal Indian Child Welfare Act (ICWA) of the existence and contents of the report.

At its November 14, 1986 meeting, the Committee held further discussions on the subject of minority highway contracting and expanded its discussion into the provisions of the DOD Minority Business Certification Program that affects American Indians. Committee members emphasized that tribes determine their own membership and that the statutes should reflect this fact. Chairperson Metz directed staff to prepare a bill draft to clarify s. 560.036, Stats., to provide explicitly that the governing body of a tribe is responsible for documenting whether a person is recognized as an Indian.

The Committee also reviewed a subsequent draft on child abuse reporting. Based on the Committee's discussions, Chairperson Metz directed staff to prepare a final version of the bill draft, incorporating the suggested changes, to be submitted to the Committee for approval by mail ballot.

At its December 17, 1986 meeting, the Committee discussed the bill draft (WLCS: 136/1) on the definition of "American Indian," which became 1987 Assembly Bill 316. The Committee and Legislative Council votes on this proposal are set forth in Part II, C, of this Report.

C. COMMITTEE AND COUNCIL VOTES

At its December 17, 1986 meeting, the AISC recommended that the Legislative Council introduce WLCS: 136/1 by a vote of Ayes, 8 (Reps. Metz, Ourada and Zeuske; and Public Members Schlender, Gurnoe, Keshena,

Taylor and Vele); Noes, 0; Absent, 6 (Sens. Harsdorf and Kincaid; Reps. S. Coggs, Holperin and Plizka; and Public Member Hill); and Not Voting, 0.

At its March 25, 1987 meeting, the Legislative Council voted to introduce the proposal in the 1987 Legislative Session by a vote of Ayes, 18 (Speaker Loftus; Sen. Risser; Reps. Nelsen, Bell, Bradley, M. Coggs, Hauke, McEssy, Prosser, Schneider and Tesmer; and Sens. Davis, Engeleiter, Kreul, Lee, Moen, Norquist and Strohl); Noes, 0; and Absent, 3 (Rep. Clarenbach; and Sens. George and Harsdorf).

D. STAFF MATERIALS

The Appendix lists all materials received by the Committee, relating to the subject matter contained in Assembly Bill 316. Of particular interest is MEMO NO. 13, Information on Statutory Definitions and Descriptions of "Indian", dated January 10, 1986, which discusses a number of issues relating to whether there should be a uniform statutory definition of the term "Indian." The Memo also summarizes current definitions of that term in the statutes. This and other materials listed in the Appendix are available at the Legislative Council offices.

PART III

DESCRIPTION OF 1987 ASSEMBLY BILL 316

A. BACKGROUND

The DOD establishes and maintains a list of certified minority businesses under s. 560.036, Stats. A minority business must be at least 51% owned, controlled and managed by one or more minority group members. A minority group member is a Black, Hispanic, American Indian, Eskimo, Aleut, native Hawaiian or Asian-Indian or a person of Asian-Pacific origin. The statute defines each of these minority groups.

The purpose of the Minority Business Certification Program is to establish a list of businesses eligible to participate in the following three state purchasing programs:

1. Minority business preference in state purchasing {s. 16.75 (3m), Stats.}. State agencies are directed to attempt to ensure that 5% of the total amount expended for materials, supplies, equipment and contractual services in each fiscal year is paid to certified minority businesses. State agencies are authorized to make purchases from minority businesses which submit qualified, responsible and competitive bids that are up to 5% higher than the low bid.

2. Minority businesses preference in state construction projects {s. 16.855 (10m), Stats.}. The DOA is directed to attempt to award 5% of the total amount of state construction projects which must be awarded to the lowest qualified responsible bidder (projects which exceed $30,000) to certified minority businesses. The DOA is authorized to exceed the low bid by up to 5% to award a contract to a minority business.

3. Minority business participation goal for building repair contracts {s. 16.87 (2), Stats.}. The DOA is directed to attempt to award 5% of the total amount of contracts for building repair, which are not awarded by low bid, to certified minority businesses.

B. MAJOR PROVISIONS

Assembly Bill 316 clarifies the definition of "American Indian," which is used in the state's minority business certification program. The current definition in s. 560.036 (1) (a), Stats., has three different criteria for determining that a person is an American Indian. A person who meets any one of the three criteria is deemed to be an American Indian. These three criteria are as follows:

1. Enrollment as a member of a federally-recognized American Indian tribe or band.

2. Possession of documentation of at least one-fourth American Indian ancestry.

3. Possession of documentation of tribal recognition as an American Indian.

Assembly Bill 316 retains the three criteria and makes minor changes in the third one. The third part of the definition is clarified by specifying that the person must be recognized as an American Indian by the elected governing body of a federally-recognized American Indian tribe or band.

The AISC recommended this amendment because the current statute, with the reference to "tribal recognition," could be interpreted to permit members of the tribe other than the elected governing body to certify that a person is an American Indian.

Each federally-recognized Indian tribe or band in Wisconsin has exclusive authority, under its constitution, to recognize individuals as enrolled members of the tribe or band. The requirements for enrollment differ among the various tribes and bands, but no entity other than the tribe or band may recognize individuals as enrolled members.

Tribal enrollment would satisfy the first of the three criteria in s. 560.036 (1) (a), Stats. If an individual does not qualify for enrollment as a member of the tribe or band, it is the elected governing body of the tribe or band which should determine that the individual is nevertheless an American Indian for purposes of the Minority Business Certification Program.

The amended definition of "American Indian" also affects the minority group set-aside program of the arts board under s. 44.53 (1) (h), Stats., the minority business demonstration and training program of the Milwaukee metropolitan sewerage district under s. 66.905, Stats., and the minority business highway contracting requirements of s. 84.075, Stats. These three programs include cross-references to the definitions of "minority business" and "minority group member" in s. 560.036, Stats.

PS:wf;kja

APPENDIX

COMMITTEE MATERIALS

Staff Materials

1. MEMO NO. 13, Information on Statutory Definitions and Descriptions of "Indian" (January 10, 1986).

Other Materials

1. Letter to Joseph Bresette, Executive Director, Great Lakes Inter-Tribal Council, from Representative Sharon K. Metz, Chairperson, requesting comment on the issue of statutory definitions of the term "Indian."

2. Memorandum to tribal chairpersons from the Great Lakes Inter-Tribal Council, providing information on the statutory definitions of "Indian."

3. Letter to Representative Sharon K. Metz, Chairperson, from Joseph Bresette, Executive Director, Great Lakes Inter-Tribal Council, concerning the response to Chairperson Metz's request for comments on the issue of statutory definitions of the term "Indian."